MALAYSIAN REPORTS

Minister of Home Affairs v Persatuan Aliran Kesedaran Negara

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 408 OF 1987
ABDUL HAMID LP, MOHAMED YUSOFF AND AJAIB SINGH SCJJ
4 JANUARY 1990

Administrative Law — Judicial review — Certiorari and mandamus — Application to quash decision of Minister of Home Affairs rejecting application for permit to print and publish a magazine in Bahasa Malaysia — Absolute discretion of Minister — No evidence to quash the decision of Minister on ground of illegality, irrationality or procedural impropriety — Printing Presses and Publications Act 1984, ss 5, 6 & 12

In this case, the respondents had applied for a permit under s 6(1) of the Printing Presses and Publications Act 1984 to print and publish in Bahasa Malaysia a magazine under the name and style of *Seruan Aliran*. The application was refused by the Minister of Home Affairs. The respondents applied for an order of certiorari to remove into the High Court for the purpose of quashing the decision of the Minister and for an order of mandamus directing the Minister to hear and determine the application for the permit according to law. The High Court made an order quashing the decision of the Minister and ordered that the Minister shall hear and determine according to law the application for the permit. [See [1988] 1 MLJ 440.] The appellant appealed.

Held, allowing the appeal:

(1) Section 12(2) of the Printing Presses and Publications Act 1984 gives the Minister of Home Affairs 'absolute discretion to refuse an application for a licence or permit'. So unless it can be clearly established that the Minister for Home Affairs had in any way exercised his discretion wrongfully, unfairly, dishonestly or in bad faith, the High Court cannot question the discretion of the Minister.

(2) On the information that was before him, it could not be said that the Minister of Home Affairs had acted with any impropriety in exercising his discretion in rejecting the respondent's application for a permit. There is no evidence that the Minister was in any way prejudiced or biased or had acted in bad faith. It also cannot be said that the Minister had acted contrary to the rules of natural justice. He had considered the written application of the respondent for a permit and had taken all relevant considerations into account as set out in his affidavit before he arrived at his decision to reject the application.

(3) There is nothing in evidence to show that the Minister had taken irrelevant matters into consideration or that he had acted without any or in excess of his authority. There is no evidence on which the respondent can base its claim for quashing the decision of the Minister on the ground of illegality, irrationality or procedural impropriety.

(4) The Minister of Home Affairs had also in no way infringed any provision of the Federal Constitution or the National Language Act 1963/67.

[Dalam kes ini, responden telah memohon untuk permit di bawah s 6(1) Akta Mesin Cetak dan Penerbitan 1984 untuk mencetak dan menerbitkan dalam Bahasa Malaysia majalah yang bernama *Seruan Aliran*. Permohonan itu telah ditolak oleh Menteri Hal Ehwal Dalam Negeri. Responden memohon perintah certiorari untuk membawa keputusan Menteri itu ke Mahkamah Tinggi supaya dibatalkan dan perintah mandamus mengarahkan Menteri itu mendengar dan memutuskan permohonan mendapat permit itu mengikut undang-undang. Mahkamah Tinggi telah membuat perintah membatalkan keputusan Menteri itu dan mengarah Menteri itu mendengar dan memutuskan permohonan mendapat permit itu mengikut undang-undang. Perayu telah membuat rayuan.

Diputuskan, membenarkan rayuan:

(1) Section 12(2) Akta Mesin Cetak dan Penerbitan 1984 memberi Menteri Hal Ehwal Dalam Negeri 'budi bicara mutlak menolak permohonan mendapat lesen atau permit'. Oleh kerana itu, Mahkamah Tinggi tidak boleh menyoal budi bicara Menteri itu melainkan adanya bukti jelas bahawa Menteri itu dengan apa cara pun telah menggunakan budi bicaranya dengan salah, tidak adil atau tidak jujur atau dengan niat jahat.

(2) Memandangkan maklumat yang dihadapkan kepadanya, tidak boleh dikatakan bahawa Menteri itu telah bertindak secara sumbang bila ia menggunakan budioleh bicaranya menolak permohonan pihak responden. Tidak ada bukti yang menunjukkan bahawa Menteri itu telah dipengaruhi oleh prasangka atau bertindak dengan berat sebelah atau dengan niat jahat. Menteri itu juga tidak boleh dikatakan telah bertindak menentang peraturan keadilan asasi. Beliau telah mempertimbangkan permohonan bertulis yang dikemukakan oleh responden dan telah mengambilkira semua hujah yang bersangkutan sebelum membuat keputusannya. Ini boleh dilihat dengan jelas dalam afidavitnya.

(3) Tidak terdapat apa-apa keterangan yang menunjukkan bahawa Menteri itu telah mengambilkira perkara-perkara yang tidak berkaitan atau beliau telah bertindak tanpa atau melebihi kuasa. Tidak ada keterangan yang boleh digunakan oleh responden untuk menyokong permohonannya supaya keputusan itu dibatalkan atas alasan kepenyalahan undang-undang, tidak menurut akal fikiran yang rasional atau kesalahan acara.

(4) Menteri itu juga tidak sama sekali melanggar apa-apa peruntukan di dalam Perlembagaan Persekutuan atau Akta Bahasa Kebangsaan 1963/1967.]

Case referred to

1 *Council of Civil Service Unions & Ors* v *Minister for the Civil Service* [1985] AC 374 (refd)

Legislation referred to

Printing Presses and Publications Act 1984 ss 4, 5(1), 6(1)(a), 6(2), 7, 12(2)

Appeal from: Originating Motion No R8-32-53-87 (High Court, Kuala Lumpur)

KN Segara (Senior Federal Counsel) for the appellant.
CV Dass (*Gan Teik Chee* and *S Nathabalan* with him) for the respondents.

Ajaib Singh SCJ (delivering the judgment of the court): This is an appeal brought by the Minister of Home Affairs against the order of the High Court dated 2 September 1987 [see [1988] 1 MLJ 440] whereby the High Court quashed the decision of the Minister of Home Affairs dated 27 April 1987 wherein the Minister of Home Affairs had rejected an application by the respondents — Persat-

uan Aliran Kesedaran Negara ('Aliran') — for a permit under s 6(1)(a) of the Printing Presses and Publications Act 1984 to print and publish in Bahasa Malaysia a magazine under the name and style of *Seruan Aliran*.

On 10 June 1987, by way of an ex parte notice of motion, the High Court granted leave to Aliran to apply for an order of certiorari to remove into the High Court for the purpose of quashing the decision of the Minister of Home Affairs dated 27 April 1987 and for an order of mandamus directing the Minister of Home Affairs to hear and determine according to law Aliran's application for the permit to print and publish in Bahasa Malaysia a magazine under the name and style of *Seruan Aliran*.

Pursuant to the order obtained by Aliran on 10 June 1987, Aliran applied for and obtained an order from the High Court dated 2 September 1987 whereby the decision of the Minister of Home Affairs dated 27 April 1987 was quashed and it was further ordered that the Minister of Home Affairs shall hear and determine according to law Aliran's application for the permit within 30 days.

In support of Aliran's application for the order of certiorari, the president of Aliran, Dr Chandra Muzaffar, filed an affidavit stating, inter alia, as follows:

> Aliran is a society registered under the Societies Act 1966 (registered on 25 January 1977). Sometime in 1983, Aliran applied to the Minister of Home Affairs ('the Minister') for a publication permit under s 7(1) of the Printing Presses Act 1948 to publish in English a monthly magazine under the name and style of *Aliran Monthly*. Aliran's application was for the magazine to be published solely in English. By letter dated 27 December 1983, Aliran was granted a publication permit to print the said magazine. The publication permit to publish *Aliran Monthly* has been renewed annually since 1983.
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> By an application in writing dated 13 November 1983, Aliran applied to the Minister for a publication permit under s 7(1) of the Printing Presses Act 1948 in respect of a monthly magazine to be published in Bahasa Malaysia under the name and style of *Seruan Aliran*.
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> By letter dated 17 March 1984, Aliran's application for a permit to print and publish *Seruan Aliran* was rejected by the Minister.
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> By letter dated 14 April 1984, Aliran appealed to His Majesty the Yang di-Pertuan Agong under s 7(6) of the Printing Presses Act 1948 against the refusal by the Minister to grant a permit to print and publish Seruan Aliran. His Majesty the Yang di-Pertuan Agong did not make any decision on our appeal.
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> After a two-year interval, Aliran decided to apply again, this time for a fortnightly magazine to be published in Bahasa Malaysia. Our application made in writing dated 12 November 1986 related to a printing and publication permit to print and publish in Bahasa Malaysia a magazine under the name and style of *Seruan Aliran*. It was made pursuant to s 6(1) of the Printing Presses and Publications Act 1984 ('the 1984 Act'). We proposed to include in *Seruan Aliran* reports and comments relating to current affairs with the purpose of developing unity in the country.
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> By letter dated 27 April 1987, we were informed that the Minister had rejected our application for the printing and publishing of *Seruan Aliran*. No reasons for the refusal were given in his letter. Accordingly, we are not in a position to comment on his reasons, if he had any.
>
> For the reasons set out in para C of the statement filed in this application, Aliran is of the opinion that the Minister exercised his discretion under s 6 of the 1984 Act wrongly and improperly.
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> (Paragraph C in the statement supporting Aliran's application for an order of certiorari sets out the grounds on which the order was sought:
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> (1) That the Minister of Home Affairs failed to hear and determine Aliran's application dated 12 November 1986 according to law.
> (2) That he failed properly to exercise the discretion vested in him under s 6(1)(a) of the Printing Presses and Publications Act 1984 in that he failed and/or omitted to take relevant matters into account, namely:
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> (i) that in refusing the application Aliran was denied its constitutional right to freedom of speech and expression as enshrined in art 10(1)(a) of the Federal Constitution;
> (ii) Aliran has not contravened the law or the conditions attached to the permit for the publication of its magazine *Aliran Monthly* in the English language;
> (iii) Aliran is lawfully registered under the Societies Act 1966 — it is responsible and law-abiding and established with the objective of upholding the Federal Constitution and dedicated to the attainment of justice, freedom and solidarity;
> (iv) Aliran has never infringed the laws of the land and has never been charged for any criminal offence;
> (v) that in denying Aliran the right to print and publish in Bahasa Malaysia, the Minister of Home Affairs failed to act in accordance with art 152 of the Federal Constitution and the National Language Act 1963-1967 in that Aliran is permitted to print and publish in the English language but not in Bahasa Malaysia although the latter is the national language of the nation;
> (vi) that the refusal of Aliran's application has the effect of discriminating Aliran contrary to art 8 of the Federal Constitution having regard to the fact that similar public interest societies and political parties like UMNO, PAS, DAP and PSRM have been given permits to print and publish in Bahasa Malaysia.
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> (3) There was a denial to Aliran of natural justice as the Minister of Home Affairs never afforded an opportunity to Aliran of being heard or consulted prior to the Minister exercising his discretion. Alternatively the Minister of Home Affairs failed to act fairly when exercising his discretion.
> (4) For the above reasons, the Minister of Home Affairs erred in law when exercising his discretion and/or acted without or in excess of his jurisdiction under the Printing Presses and Publications Act 1984, thereby rendering his purported decision of 27 April 1987 a nullity.)

Further, having regard to the fact that Aliran already has a permit to publish in English, Aliran had a reasonable or legitimate expectation that its application for a permit to print and publish *Seruan Aliran* in Bahasa Malaysia would be similarly granted. This is particularly so when Bahasa Malaysia is the national and official language of the nation and when a substantial portion of the population is conversant in the language. Accordingly, Aliran is advised by its solicitors and verily believe that the Minister is obliged in law to comply with the rules of natural justice in that he ought to have afforded Aliran an opportunity of being heard or should have at least consulted us before he exercised his statutory discretion in refusing us a permit to print and publish *Seruan Aliran*. No such opportunity was afforded to us before he exercised his discretion. Likewise, we were never consulted.

Further or alternatively and for the reasons set out above, Aliran contends that the Minister was obliged in law to act fairly in the exercise of his statutory discretion — he failed to act fairly by not affording us an opportunity of being heard before he refused our application.

In opposing Aliran's application to quash the decision of the Minister of Home Affairs, the Deputy Minister of Home Affairs, Dato Megat Junid bin Megat Ayob, filed an affidavit wherein he states:

I am the Deputy Minister of Home Affairs and I am authorized to affirm this affidavit on behalf of the Minister of Home Affairs. By virtue of art 43A cl (2) of the Federal Constitution, I am required to assist the Minister of Home Affairs and by reason thereof, I am also empowered to exercise the powers of the Minister under the Printing Presses and Publications Act 1984 (hereinafter referred to as 'the 1984 Act').

Aliran was registered as a society under s 7 of the Societies Act 1966 on 25 January 1977. It is not a political party. On 3 April 1979, Aliran made its first application for a permit for publishing a newspaper known as *Aliran* once in three months pursuant to s 7(1) of the Printing Presses Act 1948 (now repealed but hereinafter referred to as 'the 1948 Act'). The application was to print the newspaper in Bahasa Malaysia and English.

Pursuant to this application and the 1948 Act, a permit was granted to Aliran to print and publish *Aliran* once in three months in Bahasa Malaysia/English in one issue. The permit was issued to expire on 31 December 1980.

On 23 October 1980, 23 October 1981 and 3 November 1982, Aliran made similar applications for permits for the years ending 1981, 1982 and 1983 respectively. Aliran was granted a permit for each of these years.

Aliran did make an application dated 24 September 1983 similar to the previous applications for a permit except for three material particulars, namely:

(i) that the newspaper was to be called *Aliran Monthly*;
(ii) that it was to be printed in English; and
(ii) that it was to be printed monthly.

Pursuant to the said application and the 1948 Act, a permit was granted to Aliran to print and publish *Aliran Monthly* in English/Bahasa Malaysia in one issue. The permit was issued to expire on 31 December 1984.

Aliran did not appeal under the provisions of the 1948 Act on the grant of the permit which clearly stipulated that the newspaper *Aliran Monthly* was to be printed in English/Bahasa Malaysia in one issue notwithstanding that the application was to print in English only. Aliran in fact expressed appreciation for the issue of the permit by letter dated 20 January 1984.

On 1 September 1984, the Printing Presses and Publications 1984 Act came into force ('1984 Act').

On 24 September 1984 Aliran applied for a permit for the year 1985 under s 6(1) of the 1984 Act, to print and publish *Aliran Monthly* in English/Bahasa Malaysia.

Pursuant to the said application and the 1984 Act, a permit was granted to Aliran to print and publish *Aliran Monthly* in Bahasa Malaysia/English. The permit was issued to expire on 30 November 1985.

On 15 August 1985 and 20 September 1986, Aliran made similar applications for permits in respect of years 1986 and 1987 respectively. Permits for the respective years were granted to Aliran.

In all its yearly applications for permits Aliran has consistently stated:

(i) that the newspaper would be printed in Bahasa Malaysia/English (Inggeris dan Bahasa Malaysia) with the exception of its application dated 24 September 1983 which was for English only;
(ii) that the contents of the newspaper would be reports, comments and articles regarding social affairs with book reviews on literary works; and
(iii) that the purpose of the publication was to foster national unity and social development awareness.

All yearly permits granted to Aliran since 1979 has consistently stipulated that the newspaper was to be printed in Bahasa Malaysia/English in one issue.

I confirm that on 13 November 1983 Aliran applied for a permit to print and publish a newspaper entitled *Seruan Aliran* in Bahasa Malaysia pursuant to the provisions of the 1948 Act and that the said application was refused.

On 27 April 1987, after a careful study of Aliran's application (dated 12 November 1986), and all the information available to me regarding any current permit issued to the applicant, I exercised my discretion under s 12(2) of the 1984 Act and refused Aliran's application for a permit to print and publish a newspaper entitled *Seruan Aliran* either in Bahasa Malaysia or English or in Bahasa Malaysia and English in one issue.

In exercising my discretion to refuse the application for the permit I took into consideration the following:

(a) Aliran is a society registered under s 7 of the Societies Act 1966;
(b) Aliran is not a political party;
(c) part C of Aliran's application for *Seruan Aliran* and in particular paras 2 and 5 thereof, that is,

2 Contents of the publication — reports, comments, articles on social affairs and commentaries on books, writings on literature etc, and
5 Purpose of the publication — to promote national unity and awareness of the development of the people;

(d) as at the date of my decision (27 April 1987), Aliran had a current permit expiring on 30 November 1987 for the newspaper *Aliran Monthly* issued pursuant to an application made on 20 September 1986;

(e) part C of Aliran's application for *Aliran Monthly* and in particular paras 2 and 5 thereof which are identical to Part C paras 2 and 5 of Aliran's application for *Seruan Aliran* as stated in c above;
(f) the current permit held by Aliran for *Aliran Monthly* does not prohibit the printing of the newspaper solely in Bahasa Malaysia;
(g) the current permit held by Aliran for *Aliran Monthly* does not restrict the size of the newspaper, that is, in terms of the number of pages or the number of articles;
(h) it was patent that the subject matters intended to be covered by *Seruan Aliran* are currently covered by *Aliran Monthly*;
(i) any application for a change in name from *Aliran Monthly* to *Seruan Aliran* could be favourably considered in respect of the current permit for *Aliran Monthly*;
(j) the intended publication of *Seruan Aliran* was clearly not contemplated as a business venture by Aliran to compete with *Aliran Monthly*;
(k) the constitution of Aliran does not permit it to be engaged in any business venture.

I reiterate that in refusing the application for a permit to print and publish *Seruan Aliran*, I had exercised my discretion in the interest of Aliran and the public at large after a careful consideration of all information supplied by Aliran itself and which discretion bona fide and impartially without any prejudice or discrimination against Aliran.

In reply to the affidavit of the Deputy Minister of Home Affairs, Dr Chandra Muzaffar states in a further affidavit that:

Although Aliran's application (dated 24 September 1983) for a publication permit to publish *Aliran Monthly* was only in the English language, Aliran did not object to the permit granted to publish in English/Bahasa Malaysia. This was because Aliran is and was at all material times committed to the promotion of the national language — hence Aliran was not unhappy with the permit that allowed it to carry one or two articles in Bahasa Malaysia thereby enabling Aliran to expose its English-speaking readership to Bahasa Malaysia.

Aliran expressed its appreciation as alluded to in the Deputy Minister's affidavit because the Minister allowed Aliran to convert the quarterly publication permit into a monthly one without condition.

All subsequent applications for renewal of *Aliran Monthly* stated that the publications would be printed in English/Bahasa Malaysia in line with the conditions imposed by the Minister.

I am advised by our solicitors and verily believe that publication of *Aliran Monthly* solely in Bahasa Malaysia would not have been permissible as it would be an infringement of a condition of the current permit which expressly states that our publication is to be in Bahasa Malaysia/English.

I say that though the subject matters to be covered in *Seruan Aliran* are currently covered by *Aliran Monthly*, two separate publications are intended so that both the English-speaking readership as well as the Bahasa Malaysia-speaking readership can be reached. These two sections of the readership comprise of people from different segments of the public as their linguistic media are different. In any case it is intended that *Aliran Monthly* should remain an English Language publication and *Seruan Aliran* a Bahasa Malaysia publication.

In his grounds of judgment, the learned judge states (at p 442) that:

The Minister says he exercised his discretion under s 12(2) of the 1984 Act. That subsection reads:

'The Minister shall have the absolute discretion to refuse an application for a licence or permit or the renewal thereof'.

It is common ground that although the discretion is absolute, it is not unfettered. It follows that the exercise of the discretion is subject to judicial review. In the instant case, Aliran has complied with all the requirements for a permit. There is no evidence that the granting of the permit asked for is against the public interest.

In my view, the granting of a permit to print and publish a magazine under the 1984 Act should be made as a matter of course provided, of course, if all the requirements for such a permit have been complied with. The 1984 Act is a regulating Act and generally intended to police publications available to the public requiring a permit to print and publish so that the authorities know who the printers and publishers are and the desirability of such publications being exposed to the general public. At the granting of permit stage the consideration for the exercise of the Minister's discretion is limited to protecting the public interest or national interest in respect of public order, morality and security as is shown in ss 4 and 7 of the 1984 Act. But these considerations must be obvious from the application itself or from other information made available to the Minister. In the present case, the Minister relied entirely on the information supplied by the applicant. Except in obvious cases, the discretion to refuse to grant a permit cannot be exercised in anticipation that the applicant is likely to publish material which may offend against any law. Should such undesirable material be published, then the Minister has the power to revoke the permit under s 6(2) of the 1984 Act. The printer and publisher is open to prosecution under the Official Secrets Act 1972, the Sedition Act 1948, the Penal Code (FMS Cap 45) and to suits for defamation. Both the government and the public are well-protected by these laws.

On the facts of this case, I found that the Minister had no good reasons in refusing the application for a permit and accordingly granted the orders prayed for with costs.

Aliran's application by way of certiorari was for a judicial review of an administrative decision made by the Minister of Home Affairs whereby he had rejected Aliran's application for a permit to print and publish in Bahasa Malaysia a magazine under the name of *Seruan Aliran*. The High Court may intervene and set aside an administrative decision made by a Minister in the exercise of his discretion if it can be shown to the satisfaction of the court that the Minister had acted without any authority or had acted ultra vires his authority. Also, if he had acted in bad faith or contrary to the rules of natural justice or with any element of prejudice or bias against the person affected by his decision.

In the course of his submission, counsel for Aliran cited several cases in support but we find it sufficient to refer to only one case which fairly sums up the position of judicial review of administrative actions — *Council of Civil*

Service Unions & Ors v *Minister for the Civil Service*[1] where Lord Diplock had this to say at pp 410 and 411:

> Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.
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> By 'illegality' as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
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> By 'irrationality', I mean what can by now be succinctly referred to as '*Wednesbury* unreasonableness' (*Associated Provincial Picture Houses Ltd* v *Wednesbury Corp* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.
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> I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decisions. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice.

In the same case, Lord Roskill at p 414 states:

> Before considering the rival submissions in more detail, it will be convenient to make some general observations about the process now known as judicial review. Today, it is perhaps commonplace to observe that as a result of a series of judicial decisions since about 1950 both in this House and in the Court of Appeal there has been a dramatic and indeed a radical change in the scope of judicial review. That change has been described — by no means critically — as an upsurge of judicial activism. Historically, the use of the old prerogative writs of certiorari, prohibition and mandamus was designed to establish control by the Court of King's Bench over inferior courts or tribunals. But the use of those writs, and of their successors, the corresponding prerogative orders, has become far more extensive. They have come to be used for the purpose of controlling what would otherwise be unfettered executive action whether of central or local government. Your Lordships are not concerned in this case with that branch of judicial review which is concerned with the control of inferior courts or tribunals. But your Lordships are vitally concerned with that branch of judicial review which is concerned with the control of executive action. This branch of public or administrative law has evolved, as with much of our law, on a case by case basis and no doubt hereafter that process will continue. Thus far, this evolution has established that executive action will be the subject of judicial review on three separate grounds. The first is where the authority concerned has been guilty of an error of law in its action as for example, purporting to exercise a power which in law it does not possess. The second is where it exercises a power in so unreasonable a manner that the exercise becomes open to review upon what are called, in lawyers' shorthand, *Wednesbury* principles (*Associated Provincial Picture Houses Ltd* v *Wednesbury Corp* [1984] 1 KB 223). The third is where it has acted contrary to what are often called 'principles of natural justice'. As to this last, the use of this phrase is no doubt hallowed by time and much judicial repetition, but it is a phrase often widely misunderstood and therefore as often misused. That phrase perhaps might now be allowed to find a permanent resting place and be better replaced by speaking of a duty to act fairly. But that latter phrase must not in its turn be misunderstood or misused. It is not for the courts to determine whether a particular policy or particular decisions taken in fulfillment of that policy are fair. They are only concerned with the manner in which those decisions have been taken and the extent of the duty to act fairly will vary greatly from case to case, as indeed the decided cases since 1950 consistently show. Many features will come into play including the nature of the decision and the relationship of those involved on either side before the decision was taken.
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> My noble and learned friend, Lord Diplock, in his speech, has devised a new nomenclature for each of these three grounds, calling them respectively 'illegality', 'irrationality' and 'procedural impropriety' — words which, if I may respectfully say so, have the great advantage of making clear the differences between each ground.

Now to revert to the present appeal before us. Under s 5(1) of the Printing Presses and Publications act 1984, read with the definition of 'newspaper' under the Act, no person may print or publish any magazine in any language in Malaysia unless he obtains a permit in respect of such magazine from the Minister of Home Affairs and under s 6(1)(a), the Minister of Home Affairs may in his absolute discretion grant to any person a permit to print and publish a magazine in any language in Malaysia. Under s 6(2), the Minister of Home Affairs is empowered at any time to revoke or suspend a permit for any period he considers desirable.

Section 12(2) of the Printing Presses and Publications Act 1984 gives the Minister of Home Affairs 'absolute discretion to refuse an application for a licence or permit'. So unless it can be clearly established that the Minister of Home Affairs had in any way exercised his discretion wrongfully, unfairly, dishonestly or in bad faith, the High Court cannot question the discretion of the Minister of Home Affairs.

On the information that was before him, we do not think that the Minister of Home Affairs had acted with any impropriety in exercising his discretion in rejecting Aliran's application for a permit. There is no evidence that the Minister of Home Affairs was in anyway prejudiced or biased or had acted in bad faith. It cannot also be said that the Minister of Home Affairs had acted contrary to the rules of natural justice. He had considered the written application of Aliran for a permit and had taken all relevant considerations into account as set out in his affidavit before he arrived at his decision to reject Aliran's application. The Minister of Home Affairs is not required under

s 6(1)(a) of the Printing Presses and Publications Act 1984 to call for Aliran and hear its representative before making a decision whether or not to grant a permit. The application of Aliran for a permit to print and publish *Seruan Aliran* is contained in four pages of the official application form wherein all the relevant particulars and grounds for the application are set out. There was nothing more that the Minister of Home Affairs needed to make his decision on the application.

There is nothing in evidence to show that the Minister of Home Affairs had taken irrelevant matters into consideration or that he had acted without any or in excess of his authority. There is no evidence on which Aliran can base its claim for quashing the decision of the Minister of Home Affairs on the grounds of illegality, irrationality or procedural impropriety.

We are also of the view that the Minister of Home Affairs had in no way infringed any provision of the Federal Constitution or the National Language Act 1963/67. With respect we think that the reasons given by the learned judge in quashing the decision of the Minister of Home Affairs are somewhat general and are not cogent enough to justify interference with the discretion of the Minister of Home Affairs. In the event, therefore, we allow the appeal with costs and set aside the order of the High Court dated 2 September 1987.

Appeal allowed.

Solicitors: *Shook Lin & Bok*

Reported by *Prof Ahmad Ibrahim*

Chung Khiaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd & Anor

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 326 OF 1988
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND AJAIB SINGH SCJJ
3 JANUARY 1990

Companies and Corporations — Loan — Advance by bank to finance purchase of whole of share equity in hotel by a company — Security for the loan being the property belonging to the hotel itself — Whether loan agreement void as being a contract prohibited by statute or a contract entered into to defeat the object of a statute — Whether subsequent loan agreement tainted with illegality — Companies Act 1965, s 67

Contract — Illegality — Loan agreement tainted by illegality — Whether enforceable — Contracts Act 1950, s 24

In this case, the appellants ('the bank') had, by letter dated 29 October 1980, agreed to grant to a company, Johore Tenggara Sdn Bhd, a fixed loan of $1,250,000 to facilitate the purchase by the directors of the company of the shares of Hotel Rasa Sayang Bhd ('the hotel'). This fixed loan was secured. An agreement for this purpose was entered into on 19 November 1980 by the parties concerned. The hotel executed the securities and the bank disbursed the loan. On 28 September 1982, the bank granted an overdraft facility and a further loan of $2,500,000 to the hotel secured by a first legal charge for an amount up to $4,000,000 over the hotel's land and a further first legal supplementary charge of the same sum on land comprised in Grant No 753 for lot no 218 situated also in the township of Johore Bahru owned by Upaya Ladang Koko Sdn Bhd, a subsidiary company of the hotel. As further security for the term loan, the hotel was to issue a debenture in favour of the bank over its property and undertaking and also to obtain joint and several guarantees secured from all the directors.

Proceedings in the High Court against the hotel commenced with Civil Suit No 23-1086 of 1986 which was the main action by the bank against the hotel to recover the sum of $3,785,000.39 and interest thereon. Civil Suit No 23-1085 of 1986 was against the guarantors to recover the same said sum of $3,785,000.39 based on a document of guarantee dated 2 October 1982. The bank also took several actions to realize the securities provided by the hotel to recover the sum of $3,785,000.39 and interest thereon. Civil Suit No 23-1085 of 1986 was against the guarantors to recover the same said sum of $3,785,000.39 based on a document of guarantee dated 2 October 1982. The bank also took several actions to realize the securities provided by the hotel. These actions were consolidated by order of court.

At the commencement of the trial on 22 December 1987, the issue of the alleged illegality of both the 1980 and 1982 loans granted by the bank was agreed upon to be tried as a preliminary question of law. After hearing submissions and considering the affidavits and documents produced, the trial judge found for the defendants/respondents on the ground that both the 1980 and 1982 loan agreements were illegal and unenforceable.

The appellants appealed. The appeal centred on two broad questions: first, whether the 1980 loan agreement is void for being a contract prohibited by statute, namely, s 67 of the Companies Act 1965 or a contract entered into to defeat the object of the statute and secondly, whether the 1982 agreement is tainted with illegality and therefore should not be enforced.